

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE COMPLAINT OF CITY OF)	
BARBOURVILLE, ET AL. VS.)	CASE NO. 8496
DELTA NATURAL GAS COMPANY, INC.)	

INTERIM ORDER

On April 5, 1982, the cities of Barbourville and Corbin, Kentucky, along with 21 other individuals or entities which are customers of Delta Natural Gas Company, Inc. ("Delta"), filed a complaint with this Commission against Delta. The gravamen of this complaint is that the residents of Barbourville and Corbin, who were formerly customers of Peoples Natural Gas Company, were not properly informed of the magnitude of the rate increase that was requested from this Commission by Delta after it purchased Peoples Gas in December, 1980. The rate increase request in question was filed by Delta on June 11, 1981, wherein it requested \$3.5 million in additional revenue. On December 1, 1981, the PSC issued an order granting Delta approximately \$2.2 million in additional revenue. (PSC Case No. 8256.) This increase in rates affected all of Delta's customers, including those residing in Barbourville and Corbin who were previously served by Peoples Gas and who are now the Complainants herein.

On April 22, 1982, Delta filed its answer to the complaint as well as a motion to dismiss the complaint. Delta's primary grounds for seeking dismissal of the complaint are (1) that the Complainants are barred from pursuing this action by the doctrine of res judicata since the Complainants were represented at the hearings held before the PSC in this matter in July and October, 1981, through the Attorney General's participation in the case through intervention by its Consumer Protection Division, and (2) that the complaint amounts to an application for rehearing of the PSC's rate order in Case No. 8256 and, as such, the application was not filed within the 20-day period mandated by KRS 278.400.

After consideration of the above-stated facts and being advised, the Commission finds as follows:

1. The Commission recognizes that KRS 367.150(8)(a) makes the Attorney General's Consumer Protection Division the representative of all customers of a particular utility whenever that office chooses to intervene in a rate case before the PSC, as it clearly did in Case No. 8256. However, the Attorney General's Office, like all governmental agencies, is necessarily limited by time and resources to focusing only on broad issues affecting a majority of consumers whenever it does intervene and participate in rate proceedings before this Commission. Common sense compels the conclusion that a group of utility customers which desires to raise a specific issue affecting them in a greater degree than

all other customers of the utility, can best present this issue by separate intervention apart from the Attorney General's intervention. Indeed, this was exactly the situation in Delta's rate case, as the City of Berea intervened along with the Attorney General. For this reason, we reject Delta's argument that the Complainants herein are estopped from pursuing this action on the ground that the Attorney General's Consumer Protection Division "represented" these Complainants through its intervention in the 1981 rate case.

2. Delta's further argument that this complaint is, in effect, a motion for rehearing of Case No. 8256 is equally misplaced. The Complainants are alleging that they were misinformed by media articles at the time of Delta's original filing as to the true impact the new rates proposed by Delta would have on those customers in the Barbourville and Corbin area who were previously served by People's Gas Company. The Complainants, accordingly, argue that they had no reason to believe intervention was necessary at the time of the original notice, and only after the new rates went into effect and these customers received their adjusted bills did Complainants feel aggrieved by the Commission's action in Case No. 8256. The Commission agrees that any application for rehearing of our December 1, 1981, Order would have had to have been filed on or before December 21, 1981. However, this action is clearly styled a "complaint" by the petitioners, and the Commission has treated it as such as indicated

by assigning this matter a new docket number. KRS 278.260 provides in relevant part as follows:

Upon a complaint in writing made against any utility...by any ten (10) patrons of the utility complained of,...that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory,...the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient.

The Complainants in this proceeding are 23 in number, they are clearly "patrons" of the utility (i.e., customers), and they are complaining that the rates established in Case No. 8256 are "excessive" (Complaint, paragraph 18). KRS 278.260 has, therefore, been properly invoked by Complainants herein, and this Commission will proceed forthwith to investigate the allegations contained therein.

Based on these findings of fact and being advised,

1. The Commission HEREBY ORDERS that Delta Natural Gas Company's motion to dismiss this complaint is hereby denied. Delta's further request to argue the motion to dismiss orally is also denied on the ground that such action would only add additional legal expense to Delta which would, in turn, have to be borne by Delta's ratepayers. If Delta wishes to continue to assert its position that the Commission is without authority to pursue this matter, it may do so at the outset of the hearing to be scheduled in this case.

2. The Commission FURTHER ORDERS that Delta Natural Gas Company, Inc., shall appear at a public hearing to be held at the

Commission's offices in Frankfort, Kentucky on May 18, 1982, at 10:00 A.M., E.D.T. to answer more fully the allegations contained in the complaint filed by Delta's customers in the Barbourville and Corbin, Kentucky, area.

Done at Frankfort, Kentucky this 5th day of May, 1982.

PUBLIC SERVICE COMMISSION

Marlin M. Voh
Chairman

Katherine Randall
Vice Chairman

Don Larue
Commissioner

ATTEST:

Secretary